IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-08-2007

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 46137 of 2002
-o-

S. Arulanandaswamy .. Petitioner

Versus

1. The Principal District Judge
Tribunal for Co-operative Cases
Thanjavur

2. The Deputy Registrar of Co-operative
Societies
Kumbakonam

3. The Special Officer
Kumbakonam Central Co-operative
Bank Limited
Kumbakonam .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. S.D.N. Vimalanathan

For Respondents : Mr. S. Gopinathan
Addl. Government Pleader for R2

Mr. R.Parthiban for R3

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ORDER

The petitioner has come forward with this writ petition praying for a writ of Certiorarified Mandamus to call for the records of the first respondent in C.M.A. No. 75 of 2000 dated 19.07.2002 in reversing the Order in ARC No.4259/95-96 dated 27.09.1996 of the second respondent and quash the C.M.A. No. 75 of 2000 by confirming the Order of the second respondent in ARC No. 4259/95-96 dated 27.09.1996 and for a consequent direction to fix the petitioner's seniority from 07.11.1968 the date of original appointment.

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2. The petitioner was appointed as Junior Supervisor in the third respondent society in the year 1968. By Order dated

11.07.1977 of the third respondent, the petitioner was dismissed from service allegedly without holding any enquiry, hence, he approached the Labour Officer for conciliation. Pending conciliation proceedings, the third respondent re-appointed the petitioner by order dated 09.04.1979. The said order dated 09.04.1979 reads as follows:-

> "Thiru. S. Arulanandasamy is re-appointed as Junior Supervisor and posted to work as Secretary for the Pandalur VCACS in Kumbakonam Taluk.
>
> He should join duty forthwith and take charge of the society from Secretary, Pandanallur VCACS and relive Thiru. S. Ramalingam.
>
> On relief, Thiru. S. Ramalingam is posted as Junior Supervisor Clerk, Kodavasal Branch.
>
> Thiru. S. Ramalingam is not entitled for any transfer T.A.
>
> The above persons should submit their joining report along with the charge list to the bank."

3. Thereafter, the petitioner filed C.P. No. 818 of 1979 before the I Additional Labour Court, Chennai claiming backwages for the period of dismissal namely 11.07.1977 to the date of re-appointment i.e., 09.04.1979 which was dismissed on merits after hearing the parties by Order dated 21.02.1981 holding that the petitioner was re-appointed, not reinstated as such he is not entitled to make a claim for backwages. The operative portion of the order dated 21.02.1981 runs as follows:-

> "....As such on this petition on the only ground that the petitioner was only reappointed and he was not reinstated in the service and as such he could not claim any backwages or other benefits as claimed in the application."

4. The petitioner, having waited for 20 years has filed execution Petition No.1/2001-2002 before the second respondent praying for backwages and continuity of service, which was allowed by order dated 21.01.2002. Aggrieved by the said order, the third respondent has filed C.M.A. No. 75 of 2002 before the District Court, Tanjore, which was allowed by order dated 19.07.2002 setting aside the order of the second respondent dated 21.01.2002 on the ground that the petitioner was re-appointed by the bank on 09.04.1979 and that the petitioner misconstruing the said order as reinstatement, filed execution petition before the second respondent, which is not maintainable. The said order dated 19.07.2002 passed in CMA No. 75 of 2002 is challenged in this writ petition.

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5. Mr. Vimalanathan, learned counsel for the petitioner

submitted that the third respondent/bank deliberately failed to consider the fact that the petitioner was appointed as Supervisor in the year 1968 and he was terminated unceremoniously without conducting any enquiry, considering the said fact, the order of reinstatement was passed by the third respondent on 09.04.1979; that the petitioner has approached the labour Court and filed C.P. No. 818 of 1979 seeking backwages, which was dismissed, later, he came to know that the second respondent is the competent person to decide the issue, accordingly, the petitioner has filed E.P. No. 1 /2001-2002 which was allowed and the third respondent was directed to give continuity of service and backwages, but the first respondent erroneously set aside the said order of the second respondent and prayed for allowing of the writ petition.

6. Mr. Parthiban, learned counsel appearing for the third respondent/Bank submitted that the services, if any, rendered by the petitioner prior to 09.04.1979 is immaterial since, the petitioner, without any murmur has accepted the order of re-appointment dated 09.04.1979 and joined the service; that the petitioner has not chosen to challenge the said order of re-appointment dated 09.04.1979, hence, it is not open to him to seek backwages and continuity of service; that the petitioner has approached the I Additional Labour Court by filing CP No. 818 of 1979 and the labour court, after hearing both sides, has rightly dismissed the claim petition on the ground that the petitioner has misconstrued the order of re-appointment dated 09.04.1979 into one of reinstatement; that the said order reached finality as the petitioner has not filed any appeal against the same; that while things are such, the order dated 21.01.2002 passed by the second respondent in the execution petition is not at all maintainable, besides that the second respondent has no jurisdiction to pass the said order, which was rightly considered by the first respondent and set aside the said Order dated 21.01.2002 by its order dated 19.07.2002 and prayed for dismissal of the writ petition.

7. On the above contention, this court heard the learned Additional Government Pleader appearing for the respondents 1 and 2 and perused the material records.

8. To resolve the disputes involved in this case, the order dated 09.04.1979 passed by the third respondent is required to be scrutinised. It is seen from the said order that the petitioner was re-appointed as Junior Supervisor and posted to work as Secretary. The said order was not challenged by the petitioner and it reached finality. In view of the fact that the petitioner was re-appointed by the third respondent, he cannot claim backwages and continuity of service. Indeed, the CP No. 818 of 1979 filed by the petitioner was disposed of by the I Additional Labour Court after hearing both the parties on 21.02.1981 wherein it was held that the petitioner has filed the said petition by misconstruing the words "re-appointment" as "reinstatement". The said order has also reached finality. After 20 years of the said order passed by the labour court, the petitioner has filed Execution Petition before the second respondent, which was erroneously entertained by

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it without properly considering the order of re-appointment dated 09.04.1979. However, the first respondent, while disposing of C.M.A. No. 75 of 2002 filed by the third respondent has rightly found that the said order dated 21.01.2002 passed by the second respondent is invalid and allowed the appeal.

9. In view of the above said discussion, this Court find that there is no infirmity or illegality in the well considered order passed by the first respondent, hence, the writ petition is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Principal District Judge
   Tribunal for Co-operative Cases
   Thanjavur

2. The Deputy Registrar of Co-operative
   Societies
   Kumbakonam

3. The Special Officer
   Kumbakonam Central Co-operative
   Bank Limited
   Kumbakonam

+1cc to Mr.S.D.N.Vimalanathan,Advocate SR 30778
+1cc to Govt. Pleader Sr 50517

BVR (CO)
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